LORD WESTBURY.[1]

LORD WESTBURY once said of a distinguished contemporary that "the monotony of his character was unrelieved by a single fault." From such a characterization Westbury himself was surely exempt. With professional capacity of the highest order he combined peculiarities of mind and faults of character which marred much of his work. His career is an interesting and, it may be added, a practical study; for while his genius raised him to the heights of distinction, his faults as surely led to his humiliation.

His eminence as a lawyer was unquestioned by his bitterest enemies. Baron Parke considered him the greatest advocate at the bar; Sir George Jessel described him as a man of genius who had taken to the law. Gladstone, who had frequent occasion to learn the temper of Westbury's mind, said of him: "It was subtlety of thought, accompanied with the power of expressing the most subtle shades of thought in clear, forcible, and luminous language, which always struck me most among the gifts of Lord Westbury. In this extraordinary power he seemed to have but one rival among all the men, lawyers and non-lawyers, of his age. I may be wrong, but the two men whom, in my own mind, I bracketed together were Lord Westbury and Cardinal Newman."[2] It was this rare combination of thought and expression which particularly distinguished him. His power of lucid statement, which was accompanied by a rare capacity for marshalling a multitude of facts and collateral details in their logical order, arose from readi-

---

[1] Richard Bethel was born at Bradford-on-Avon, June 30, 1800. He was educated at Wadham College, Oxford, taking his M. A. degree in 1820. Called to the bar at the Middle Temple in 1823, he took sick in 1840; entered parliament, was knighted, and became solicitor-general in 1852; attorney-general in 1856 and again in 1859. In June, 1861, he became lord chancellor, with the title of Baron Westbury of Westbury; resigned in 1865. He died July 20, 1873.

[2] In the parliamentary debate on the Divorce Bill, to which Gladstone was strongly opposed, Westbury remarked: "If the right honorable gentleman had lived—thank Heaven he did not — in the Middle Ages, when invention was racked to find terms of eulogium for the *subtilissimi doctores*, how great would have been his reputation!" Gladstone in his reply said: "My honorable and learned friend complimented me upon the subtlety of my understanding, and it is a compliment of which I feel the more the force since it comes from a gentleman who possesses such a plain, straightforward, John Bull-like character of mind — *rusticus, abnormis sapiens crassaque Minerva.*"

ness and clearness of conception. "Clearness of expression," he said, "measures the strength or vigor of conception. If you have really grasped a thought, it is easy enough to give it utterance." His mental bent was almost wholly judicial; he convinced by appeals to sober judgment rather than to considerations of expedient or sentiment; and the elevation which he gave to the simplest discussion arose from his habit of bringing the dryest details to the test of original principles.

Westbury's most conspicuous defect was an arrogant consciousness of intellectual superiority, manifesting itself, with utter disregard for the feelings of others, in fondness for caustic wit and rather spinous humor. He was too much in the habit of what his biographer has termed thinking aloud, without regard to the effect which the expression of his thoughts might have on others. His deliberate method of setting people right provoked intense irritation; when roused by pretentiousness or humbug, his sarcasm fell with blistering effect. In fact he bids fair to be remembered by the public at large merely as the author of innumerable sharp sayings. But his indulgence in this respect seems to have been largely due to an instinctive genius for clear-cut phrases. There appears to have been none of that hardening of the heart which might have been expected in a man whose intellect so completely predominated. He is said to have displayed singular credulity in any appeal not directed to his intellect, and his goodness of heart is attested by his few intimates.[1] He evidently felt strong enough to stand alone, caring for neither praise nor blame. Heedless alike of misconception and antagonism, he would seem to have determined to conquer the world rather than conciliate it. It was his boast that, from his youth up, he had never truckled to any

[1] Mr. Nash's admirable biography of Westbury makes it plain that his mind must have acquired its cynical bent in childhood. His earliest experiences were with the hard realities of life. His childhood was crowded with grave and distracting anxiety for his parents' and his own future. Owing to some family disputes, his father had been left almost penniless; and at a trying juncture, while deeply in debt, the elder Bethel's nearest relations turned against him, and he came near a debtor's prison. These troubles of his childhood and early life probably weighed so heavily on Westbury's mind as to engender a bitterness from which he never recovered. The self-denying efforts of his parents in his behalf were remembered with deepest gratitude. In a letter written to Lord Selborne only two months before his death, he said: "When I was made lord chancellor, I may truly say the chief feeling that arose in my mind was not that of pride or gratified vanity, but of sincere gratitude that I had lived to fulfil the predictions and the fond hopes of my father, to whom I owed all my education and all the means that had enabled me to fulfil what, when they were first formed, were but idle anticipations."

man's favor, but both at the bar and in politics had been independent even to a fault.

His success at the bar was remarkable. His views were expressed with an assurance that seemed to admit of no question. He used to say that he was paid for his opinions, not for his doubts.[1] The ascendency he acquired over the mind of Vice-Chancellor Shadwell, in whose court he practised upon taking sick, became a subject of comment; legal wits said that "Shadwell had set up an altar in Bethel whereat to worship." As chancellor, nothing puzzled him. If he ever had any doubts, he never admitted them.[2] But the temper of his mind was not calculated to make him popular with his brethren at the bar or his colleagues on the bench; for most of them, at one time or another, he took occasion to express his contempt.[3]

---

[1] A characteristic anecdote is told in connection with his first bill of exceptions. Never having seen any exceptions before, he drew them by the light of nature, and went before the master to support them. The master observed that he had never seen any exceptions in that form before. "Most probably not, sir," replied Westbury, "but I will defy my learned friend, or any one else, to indicate any particular in which these exceptions fail to attain the object for which exceptions are designed."

He was never at a loss for an answer. Having given his opinion at a consultation, he was confronted with a former opinion in which he had taken a contrary view. "It is a matter of astonishment to me," he said, "that any one capable of penning such an opinion should have risen to the eminence I have the honor to enjoy." On another occasion, while arguing a case before Lord Campbell, he was asked for his authority for a statement. "My Lord," he replied, "such is the law; but as I have to be elsewhere shortly, my friend, Mr. Archibald, will quote the cases in support of it." Mr. Archibald was seen to leave the court hastily.

[2] On the day he took his seat in the Court of Appeal in Chancery, a motion was made to set a case for hearing before the full court. "The case," said Westbury, "will be put in the lord chancellor's list. The court *is* full."

[3] On one occasion, the court having risen at the conclusion of Westbury's argument, his junior, who was to follow, remarked that he thought Westbury had made a strong impression on the court. "I think so, too," was the reply; "don't disturb it." He addressed the judges with equal freedom. "Mr. Bethel," said Lord Justice Knight-Bruce in the course of an argument, "I have heard you use that argument twice already." "Very likely, my Lord," was the retort, "for it is only by the continual dripping of the water on the stone that any impression is created." His bold denunciation of Knight-Bruce's habit of prejudging cases gave great satisfaction to the profession. His lordship, in the course of an argument, having expressed surprise at a proposition asserted by Westbury, the latter replied: "Your Lordship will hear this case first, and if your Lordship thinks it right you can express surprise afterwards. I deprecate any observations until the case is fully heard, and the proper time for the discharge of judicial duties begins."

Lord Campbell was his pet aversion. He took malicious delight in reversing his predecessor's conclusion by reference to "a few elementary principles." His feelings towards the rest of the judges apparently differed only in degree. On one occasion, having listed an appeal for hearing, he was reminded by the court that only motions of course would be heard. "But this is a motion of course," he said, "or at least its

In the theological controversies of his time, which absorbed so large a measure of public interest, he played a characteristic part. Baiting the bench of bishops in the House of Lords came to be his favorite occupation.[1] He told Dr. Jowett that until theological questions came before the courts he had believed what was ordinarily believed by members of the Church of England, but that when he began to examine for himself he was surprised to find how slender was the foundation of many statements which were confidently propounded by theologians. In 1860 he blocked the attempt of the High Church party to obtain legal condemnation of unorthodox views in the action brought against Dr. Williams and Mr. Wilson, two contributors to the celebrated "Essays and Reviews," who were charged with denying the plenary inspiration of the Scriptures. Westbury's opinion proceeds upon the theory that the court had no power to pronounce any opinion on the character, effect, or tendency of the book, adopting the rule formulated in the Gorham case, fourteen years before, that the court had no jurisdiction to determine matters of faith or doctrine on which the church had prescribed no definite rule of opinion; it had only to ascertain the true construction of the articles and formularies with reference to the charges preferred, according to legal rules for the interpretation of written documents.[2] Thereupon the High Church party, relying upon the influence of Bishop Wilberforce in convocation, secured the formal condemnation of the whole book as heretical by means of a judgment of the synod, — a course which had been pursued but once in three centuries. This action led Lord Houghton, in the House of Lords, to put a series of questions as to the powers of convocation to pass a synodical judgment on books, and as to the immunity of its members from legal proceedings consequent thereon. Lord Westbury, in reply, delivered one of his most characteristic and best known speeches. "There are," he said, "three modes of dealing with

---

equivalent. It is an appeal from Vice Chancellor ——." He once asked Sir William Erle why he did not attend the sessions of the Privy Council. "Because I am old and deaf and stupid," replied Erle. "But that 's no reason at all," said Westbury, "for I am old and Napier is deaf and Colville is stupid, and yet we make an excellent Court of Appeal." Some one having wondered why Lord Chancellor Cranworth habitually sat with the lords justices, Westbury expressed the opinion that "it doubtless arose from a childish indisposition to be left alone in the dark."

[1] He objected to Wilberforce's Bishops' Resignation Bill on the ground that "the law in its infinite wisdom had already provided for the not inprobable event of the imbecility of a bishop."

[2] 3 New Repts. 494.

convocation, since it has been permitted — which I deeply regret — to come into action again and transact business. The first is, while they are harmlessly busy, to take no notice of their proceedings; the second is, when they seem likely to get into mischief, to prorogue them and put a stop to their proceedings; the third, when they have done something clearly beyond their powers, is to bring them to the bar of justice for punishment." After referring to the laws passed to secure the royal supremacy, he continued: "I am afraid my noble friend [Lord Houghton] has not considered what the pains and penalties of a *præmunire* are, or his gentle heart would have melted at the prospect. The most reverend primate and the bishops would have to appear at this bar, not in the solemn state in which we see them here, but as penitents in sackcloth and ashes. And what would be the sentence? I observe that the most reverend primate gave two votes, his original vote and a casting vote. I will take the measure of his sentence from the sentence passed by a bishop on one of these authors, — a year's deprivation of his benefice. For two years, therefore, the most reverend primate might be condemned to have all the revenues of his high position sequestrated. I have not ventured — I say it seriously — I have not ventured to present this question to her Majesty's government, for, my Lords, only imagine what a temptation it would be for my Right Hon. friend the Chancellor of the Exchequer to spread his net and in one haul take in £30,000 from the highest dignitary, not to speak of the οἱ πολλοὶ, the bishops, deacons, archdeacons, canons, vicars, all included in one common crime, all subject to one common penalty." He then proceeded to ridicule the judgment. "I am happy to tell your Lordships that what is called a synodical judgment is a well-lubricated set of words, a sentence so oily and saponaceous that no one can grasp it; like an eel it slips through your fingers. . . . Convocation could not have been more successful, if they had synodically sat down to produce a sentence of no meaning, than they were when in their labor they produced this *ridiculous mus*." By interposing convocation, he said, they interposed an anomalous body exercising jurisdiction uncontrolled by any court of appeal, and not amenable to the crown. "Those who do not concur in these proceedings probably think that by protesting against such a course they may save themselves from consequences; but if they will take my recommendation, whenever there is any attempt to carry convocation beyond its proper limits, their best security after protesting will be to gather up their garments and flee, and remembering the pillar of

salt, not to cast a look behind. I am happy to say that in all these proceedings there is more smoke than fire, though they do not, probably, proceed from a spirit that is equally harmless." His action in the Colenso case, in the following year, added, if possible, to the hatred with which he was regarded by dogmatic theologians.[1]

It was to be expected that Westbury would have many enemies, and there were others who, while not open enemies, were not averse to taking advantage of the first opportunity to humble his pride. In 1865 two cases of official delinquency arising out of the distribution of the patronage of his office furnished a rallying ground for the disaffected.[2] It will be sufficient to say that Westbury's personal honor was in no way involved, and the most that could be said against him was that he had failed to exercise proper caution. Indeed, the committee of the House appointed to investigate the matter acquitted him of improper motives; but they observed that the general impression created by the circumstances was calculated to excite suspicion, and that the inquiry had been highly desirable. Thereupon the opposition moved a vote of censure, which was finally carried. It recited that the acts in question "show a laxity of practice and a want of caution with regard to the public interests, on the part of the lord chancellor, in sanctioning the grant of retiring pensions to public officers against whom grave charges were pending, which, in the

[1] A wit suggested the following epitaph: —

"Richard, Baron Westbury,
Lord High Chancellor of England.
He was an eminent Christian,
An energetic and merciful statesman,
And a still more eminent and merciful judge.
During his three years tenure of office
He abolished the ancient method of conveying land,
The time honored institution of the Insolvents' Court
and
The eternity of punishment.
Towards the close of his earthly career,
In the Judicial Committee of the Privy Council,
He dismissed Hell with costs
And took away from the Orthodox members of the
Church of England
Their last hope of everlasting damnation."

[2] The occasion was the retirement on pensions of two clerks against whom charges of official misconduct were pending. It was charged that Westbury had allowed them to retire, so that he might appoint his own relatives. But the specific complaint was that the men were not promptly dismissed, and it is difficult to understand how the offices became more vacant or more at his disposal by resignation than they would have been by dismissal.

opinion of the House, are calculated to discredit the administration of his great office." Westbury thereupon resigned.[1] His retiring speech was a model of dignity and urbanity. In closing he said: —

"With regard to the opinion which the House of Commons has pronounced, I do not presume to say a word. I am bound to accept the decision. I may, however, express the hope that after an interval of time calmer thoughts will prevail, and feelings more favorable to myself be entertained. I am very thankful for the opportunity which my tenure of office has afforded me to propose and pass measures which have received the approbation of parliament, and which I believe, nay, I will venture to predict, will be productive of great benefit to the country. . . . My Lords, it only remains to thank you, which I do most sincerely, for the kindness which I have uniformly received at your hands. It is very possible that by some word inadvertently used, some abruptness of manner, I may have given pain or exposed myself to your unfavorable opinion. If that be so, I beg of you to accept the sincere expression of my regret, while I indulge the hope that the circumstances may be erased from your memories."

The law reports contain about two hundred and fifty cases in which Lord Westbury formulated an opinion. In reading them, one is struck at once with the power and facility displayed in stripping cases of complicated and bewildering details and reducing them to simple, intelligible propositions.[2] Impatient of author-

[1] An incident of the occasion shows his urbanity and courage. Lord Ebury had brought in a bill to effect certain changes in the burial service, which had been thrown out. As Westbury was leaving the House he said to Lord Ebury, "My Lord, you may now read the burial service over me, with any alterations you think proper." Wilberforce, with whom Westbury's relations had become strained, relates in his memoirs that some time afterwards they met in the lobby of the House, whereupon Westbury stopped him, saying, "My Lord Bishop, as a Christian and a bishop, you will not refuse to shake hands." Wilberforce immediately complied. Westbury then said: "Do you remember where we last met? It was in the hour of my humiliation, when I was leaving the Queen's closet, having given up the great seal. I met you on the stairs as I was coming out, and I felt inclined to say, 'Hast thou found me, oh mine enemy?'" Wilberforce used to say that he was greatly tempted to finish the quotation: instead he replied, "Does your Lordship remember the end of the quotation?" "We lawyers, my Lord Bishop," answered Westbury, "are not in the habit of quoting part of a passage without knowing the whole."

[2] In addition to the cases hereafter mentioned, see Peck *v.* North Staffordshire Ry., 10 H. L. 565; O'Brien *v.* Lewis, 32 L. J. Ch. 569; English Credit Co. *v.* Arduin, 5 E. & I. App. 76; Daniel *v.* Metropolitan Ry., 5 E. & I. App. 59; Barber *v.* Myerstein, 4 E. & I. App. 335; Shepherd *v.* Harrison, 5 E. & I. App. 128; Dixon *v.* Evans, 5 E. & I. App. 612; Mersey Docks *v.* Gibbs, 1 E. & I. App. 126; City of Glasgow Ry. *v.* Hunter, 2 Scotch & Div. App. 85; Isenburg *v.* East Indian Estates, 33 L. J. Ch. 392.

ity, he proposed to ground his decision on elementary principles. It is common to find such opening statements as these: —

"My Lords, we are all exceedingly glad when, in a collection of miserable technicalities such as these which are before us here, we can see our way to something like a solid and reasonable ground of decision." [1]

"There is no difficulty at all in the matter, and if the general rules of law were more steadily kept in view it would be unnecessary to range up and down a variety of decisions, because those rules would afford the best answer and secure the removal of every difficulty." [2]

His skill in exposition was of the highest order. Without detailing the raw materials of his conclusion, he was in the habit of stating at the outset of his opinions the general principles of law by which the action should be determined. His statement of the principles of extra-territorial jurisdiction in Cookney *v.* Anderson [3] is a good illustration of his style: —

"In explanation of my decision in this case, it is necessary to begin by referring to some well-established general principles. The courts of civil judicature in every country sit to administer the municipal law of that country, and their jurisdiction is therefore limited and territorial. It is true that the duty of yielding obedience to the law of his native country may follow the native subject of that country wherever he resides; for every nation has a right to bind its own natural-born subjects by its own laws in every place. Municipal law, therefore, may provide that judgments and decrees may be lawfully pronounced against natural-born subjects when absent abroad, and may also enact that they may be required to appear in the courts of their native country even whilst resident in the dominions of a foreign sovereign. If a statutory jurisdiction be thus conferred, courts of justice in the exercise of it may lawfully cite, and on non-appearance give judgment in civil cases against natural-born subjects whilst they are absent beyond seas in a foreign land. This jurisdiction depends on the statute or written law of the country. Where it is not expressly given, it cannot be lawfully assumed. If such a law does not exist the general maxim applies, *extra territorium jus discenti impune non paretur.* But as international law in private rights is, so far as it has been clearly established, a part of municipal law, it follows that the law of a country, which gives to its municipal tribunals authority to exercise jurisdiction as to persons and things which are beyond the confines of their own territories, may also, consistently with international law, be extended in certain cases to persons who are not natural-born

[1] Scott *v.* Bennett, 5 E. & I. App. 251.

[2] Attorney-General *v.* Campbell, 5 E. & I. App. 529. See, also, Rose *v.* Watson, 10 H. L. 677.

[3] 32 L. J. Ch. 427.

subjects. For, where it is well settled by the comity of nations that any question of private right falls to be decided by the law of a particular country, it would seem reasonable that the courts of that country should receive jurisdiction and the power of citing absent parties, though residing in a foreign land. Thus, by way of example, it is generally agreed by European nations that all questions relating to the ownership of land must be decided by the *lex loci rei sitæ;* that all questions relating to the succession or administration of the property of a deceased person, whether testate or intestate, belong to the judge of the domicil of the deceased; and that contracts ought to be applied and interpreted by the law of the place where they are made, and where it is intended they should be performed. If, therefore, an action or a suit be commenced in the courts of a particular country relating to a subject which, by the consent of nations, is appropriated to the law of that country, it may be right, in order to prevent a failure of justice, to give to such courts the power of exercising complete jurisdiction, and therefore of citing absent parties, under the penalty, if they do not appear, of having judgment pronounced against them in their absence. But it is a jurisdiction that should be given and exercised with great caution, and only where it is clear, on the principles of public law, that the judgment against the absent party ought to be treated as binding by the courts of foreign countries. The right of administering justice is the attribute of sovereignty, and all persons within the dominions of a sovereign are within his allegiance and under his protection. If, therefore, one sovereign causes process to be served on the territory of another, and summons a foreign subject to his court of justice, it is in fact an invasion of sovereignty, and would be unjustifiable unless done with consent, which is assumed to be the fact if it be done in a case where a foreign judgment would by international law be accepted as binding. For, besides the general maxim which I have already cited, and which limits the jurisdiction of every tribunal to its own territory, there is another general rule, *actor sequitur forum rei;* and both are violated when the territorial judge cites and pronounces judgment against a person who does not appear and is absent in another territory. There are, therefore, two grounds on which the legislature of any country is warranted in conferring on its civil tribunals an extra-territorial jurisdiction, — one, the right which it possesses of binding universally by its laws the persons who owe to it a natural allegiance; the other, the right which it receives by international law, that is, from the consent of nations, of summoning all persons interested, wherever resident, when the subject of suit arises or is situate within its own territory, and falls to be determined by its own law and the judgment of its own courts of civil judicature."[1]

[1] For further examples of clear statement of law and facts see *Ex parte* Harding, 33 L. J. Bank. 26; Spirett *v.* Willows, 34 L. J. Ch. 365; Weston *v.* Collins, 34 L. J. Ch. 353; Bickett *v.* Morris, 1 Scotch & Div. App. 60; New Brunswick Ry. *v.* Coynbeare,

Although his want of respect for authorities[1] may sometimes have led him to go somewhat beyond the mark, his acuteness of mind was always restrained, in his judicial functions at least, by common sense. For example, in Overend & Gurney Co. *v.* Gibbs,[2] he said : —

"I think it would be a very fatal error in the verdict of any court of justice to attempt to measure the amount of prudence that ought to be exercised by the amount of prudence which the judge himself might think under similar circumstances he should have exercised. I think it extremely likely that many a judge, or many a person versed by long experience in the affairs of mankind as conducted in the mercantile world, will know that there is a great deal more trust, a great deal more speculation, and a great deal more readiness to confide in the probabilities of things with regard to success in mercantile transactions, than there is on the part of those whose habits of life are entirely of a different character. It would be extremely wrong to import into the consideration of the case of a person acting as a mercantile agent, in the purchase of a business concern, those principles of extreme caution which might dictate the course of one who is not at all inclined to invest his property in any ventures of such a hazardous character."

His opinion in Thompson *v.* Hudson[3] is a characteristic expression of his aversion for technicalities : —

"I am sure your Lordships will agree with me that the appellants have been very unfortunate in this litigation. In answer to the questions which they were required to answer in the Chamber of the Master of the Rolls, they thought that it was very rational and very right for a creditor to say to his debtor, 'Provided you pay me half of the debt or two thirds of the debt on an appointed day, I will release you from the rest, and will accept the money so paid in discharge of the whole debt; but if you do not make payment of it on that day, then the whole debt shall remain due to me, and I shall be at liberty to recover it.' If you were to put that proposition to any plain man walking the streets of London, there could be no doubt at all that he would say that it is reasonable and accordant with common sense. But if he was told that it

9 H. L. 722; Tyrrell *v.* Bank of London, 10 H. L. 38; Taafe *v.* Conmee, 10 H. L. 74; Beative *v.* Hodgson, 10 H. L. 663; Rose *v.* Watson, 10 H. L. 677; Parker *v.* Tootal, 11 H. L. 154; Cullen *v.* Atty.-Gen. 1 E. & I. App. 198; Williams *v.* Bayley, 1 E. & I. App. 216; Atty.-Gen. *v.* Campbell, 5 E. & I. App. 529; Knox *v.* Gye, 5 E. & I. App. 670.

[1] Gaun *v.* Free Fishers of Whitstable, 11 H. L. 192, is an illustration of his disregard for authorities to which he was not absolutely bound to defer. He persistently opposed to prevailing view with respect to compensation for acts authorized by statute. Ricket *v.* Metropolitan Ry., L. R. 2 H. L. 175; Glasgow Ry. *v.* Hunter, L. R. 2 H. L. Sc. 78; Duke of Buccleuch *v.* Metropolitan Bd. of Works, 5 E & I. App. 461.

[2] 5 E. & I. App. 495.

[3] 4 E. & I. App. 1.

would be requisite to go to three tribunals before you could get that plain principle and conclusion of common sense accepted as law, he would undoubtedly hold up his hands with astonishment at the state of the law."

In Martin *v.* Holgate[1] he touched the source of much of the confusion in the interpretation of wills when he said : —

"A judge is not justified in departing from the plain meaning of words which admit of a rational interpretation for the purpose of giving effect to an assumed interpretation which appears to him to be more rational or more consistent with the rest of the will."

Lord Westbury's substantial contributions to the law deal mostly with topics that fall outside the ambit of well-settled authority. In international law, especially in the domain of what has been called private international law, he rendered many decisions of importance.[2] The statement of principles in the case of Udny *v.* Udny is worth quoting as a fine specimen of exposition : —

"The law of England, and of almost all civilized countries, ascribes to each individual at his birth two distinct legal states or conditions, — one, by virtue of which he becomes the subject of some particular country, binding him by the tie of natural allegiance, and which may be called his political *status;* another, by virtue of which he has ascribed to him the character of a citizen of some particular country, and as such is possessed of certain municipal rights, and subject to certain obligations, which latter character is the civil *status* or condition of the individual, and may be quite different from his political *status.* The political *status* may depend on different laws in different countries; whereas the civil *status* is governed universally by one single principle, namely, that of domicil, which is the criterion established by law for the purpose of determining civil *status.* For it is on this basis that the personal rights of the party, that is to say, the law which determines his majority or minority, his marriage, succession, testacy or intestacy, must depend. International law depends on rules which, being in great measure derived from the Roman law, are common to the jurisprudence of all civilized nations. It is a settled principle that no man shall be without a domicil, and to secure this result the law attributes to every individual as soon as he is born the domicil of his father, if the child be legitimate, and the domicil of the mother, if illegitimate. This has been called the domicil of origin, and is involuntary. Other domicils, including domicil by oper-

[1] 1 E. & I. App. 188.

[2] Udny *v.* Udny, 1 Scotch & Div. App. 457; Cookney *v.* Anderson, 32 L. J. Ch. 427; *Ex parte* Chavasse, 34 L. J. Bank. 17; Enohin *v.* Wylie, 10 H. L. 1; Bell *v.* Kennedy, 1 Scotch & Div. App. 320; Shaw *v.* Gould, 3 E. & I. App. 80.

ation of law, as on marriage, are domicils of choice. For as soon as an individual is *sui juris* it is competent to him to elect and assume another domicil, the continuance of which depends upon his will and act. When another domicil is put on, the domicil of origin is for that purpose relinquished, and remains in abeyance during the continuance of the domicil of choice; but as the domicil of origin is the creature of law, and independent of the will of the party, it would be inconsistent with the principles on which it is by law created and ascribed to suppose that it is capable of being, by the act of the party, entirely obliterated and extinguished. It revives and exists when there is no other domicil, and it does not require to be regained or reconstituted *animo et facto*, in the manner which is necessary for the acquisition of a domicil of choice. Domicil of choice is a conclusion or inference which the law derives from the fact of a man fixing voluntarily his sole or chief residence in a particular place, with an intention of continuing to reside there for an unlimited time. This is a description of the circumstances which create or constitute a domicil, and not a definition of the term. There must be a residence freely chosen, and not prescribed or dictated by any external necessity, such as the duties of office, the demands of creditors or the relief from illness; and it must be residence fixed, not for a limited period or particular purpose, but general and indefinite in its future contemplation. It is true that residence originally temporary, or intended for a limited period, may afterwards become general and unlimited, and in such a case, as soon as the change of purpose, or *animus manendi*, can be inferred, the fact of domicil is established. The domicil of origin may be extinguished by act of law, as, for example, by sentence of death or exile for life, which puts an end to the *status civilis* of the criminal, but it cannot be destroyed by the will and act of the party. Domicil of choice, as it is gained *animo et facto*, so it may be put an end to in the same manner."

The law relating to trade-marks and patents was another congenial subject.[1] He rendered several decisions of permanent value on the law of prescriptive easements.[2] Certain miscellaneous decisions of general value will be familiar to the professional reader: Holroyd *v.* Marshall,[3] St. Helen's Smelting Co. *v.* Tipping,[4] Blades *v.* Higgs,[5] Taylor *v.* Meades,[6] Isenberg *v.* East Indian Estates Co.,[7] Lister *v.* Perryman,[8] Sackville West *v.* Holmesdale.[9]

---

[1] Leather Cloth Co. *v.* Leather Cloth Co., 33 L. J. Ch. 199; McAndrew *v.* Bassett, 33 L. J. Ch. 561; Witherspoon *v.* Currie, 5 E. & I. App. 521; Hills *v.* Evans, 31 L. J. Ch. 458; Betts *v.* Menzies, 10 H. L. 151; Horwood *v.* Great Northern Ry., 11 H. L. 676.

[2] Tapling *v.* Jones, 11 H. L. 303; Suffield *v.* Brown, 33 L. J. Ch. 249; Backhouse *v.* Bonomi, 9 H. L. 503.

[3] 10 H. L. 208. [4] 11 H. L. 649. [5] Ib. 630. [6] 34 L. J. Ch. 203.

[7] 33 L. J. Ch. 392. [8] 5 E. & I. App. 538. [9] Ib. 565.

As time goes on, it is likely that Lord Westbury's hope that he might be remembered in connection with his legal reforms will be realized. His heart was undoubtedly in this work, and he pursued it with a continuity of purpose that he failed to maintain in any other direction. He possessed many of the great qualities necessary for a law reformer; his mind was comprehensive as well as acute, and to his wide knowledge of general principles he brought an extensive practical acquaintance with the subject. But he was unsuited by temperament for the patient diplomacy by which radical legislative action is attained. The list of his legislative achievements[1] justifies his expectations of remembrance; but his accomplishments were feeble compared with his projects. In his great speech of 1863 in the House of Lords he proposed such a systematic scheme of law reform as had never been conceived before except in the master mind of Lord Bacon. Since then, others have carried on the work begun by him; and, as the outline of his splendid conception is gradually filled in by accomplished fact, it becomes a liberal profession to remember Lord Westbury for his lofty ideals as well as for his actual achievements.

Van Vechten Veeder.

CHICAGO, November 1, 1899.

[1] 1857, Probate and Administration Bill, Divorce and Matrimonial Bill; 1861, Bankruptcy and Insolvency Bill; 1861, First Statute Law Revision Bill; 1862, Land Registration Bill; 1863, Second Statute Law Revision Bill. He was an ardent supporter of Lord Selborne's Judicature Act of 1873.